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19 UNITED STATES OF AMERICA

20 UNITED STATES DISTRICT COURT

21 FOR THE CENTRAL DISTRICT OF CALIFORNIA

22 UNITED STATES OF AMERICA,

23 No. CR 24-621 (A)-MWF-6

24 Plaintiff,

25 GOVERNMENT'S BRIEF IN SUPPORT OF
PRETRIAL DETENTION FOR DEFENDANT
DURK BANKS; EXHIBITS 1-2

v.

26 DURK BANKS,
27 aka "Lil Durk,"
aka "Mustafa Abdul Malak,"
aka "Blood,"

28 Defendant.

29 Plaintiff United States of America, by and through its counsel
30 of record, the United States Attorney for the Central District of
31 California and Assistant United States Attorneys Ian V. Yanniello,
32 Gregory W. Staples, and Daniel H. Weiner, hereby files its brief in
33 support of pretrial detention for defendant DURK BANKS based on the
34 significant risk of flight, ongoing danger to the community and
35 witnesses, and risk that defendant will obstruct justice.

1 This filing is based upon the attached memorandum of points and
2 authorities, the attached Exhibit 1 and Exhibit 2 (under seal), the
3 files and records in this case, and such further evidence and
4 argument as the Court may permit.

Dated: December 12, 2024

Respectfully submitted,

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This murder case presents a straightforward detention analysis: no condition or combination of conditions can ensure defendant Banks' appearance or protect the community, including vital witnesses in this case. Because defendant cannot rebut the presumption of detention merely by offering a small portion of his wealth in a bond package, he must be detained pending his murder trial where he faces a mandatory life sentence.

Defendant has offered millions of dollars to secure pretrial release, claiming that his money and a private security company hired and controlled by defendant will somehow ensure his compliance with the law and his bond conditions. The proposed terms are woefully inadequate to protect the community and vital witnesses from harm and to mitigate defendant's risk of flight. Indeed, within hours of law enforcement arresting his co-conspirators, defendant was booked on three international flights, including at least one destined to a non-extradition country. (Dkt. 1 [Complaint] at 9-10.)

The proposed bond package makes clear defendant has access to vast resources, but his conduct in this case and others shows that he has and will use those resources to endanger the community, influence witnesses, and wield his power for violence. As the First Superseding Indictment alleges, defendant orchestrated and funded a brazen murder plot that turned a busy intersection in Los Angeles into an urban warzone. His co-conspirators fired multiple guns --- including a machinegun --- to target one of defendant's rivals, resulting in a murder in broad daylight at a gas station. Just as he

1 offers money to secure his release here, defendant had offered his
 2 money to secure the death of his rival that afternoon in Los Angeles.
 3 Attempting to collect on defendant's promise of a monetary reward,
 4 the shooters opened fire on defendant's rival, killing the rival's
 5 family member S.R. Defendant showed no remorse following the murder,
 6 and instead mocked his rival and sought to commercialize S.R.'s death
 7 by rapping about his revenge. (See Dkt. 27 [FSI], ¶ 6.)

8 But even if the allegations in this case weren't enough to
 9 detain defendant (they are), a separate federal case in Chicago also
 10 underscores why defendant cannot be released pending this trial. As
 11 alleged in a recently unsealed search warrant affidavit in the
 12 Northern District of Illinois, defendant "offer[ed] money for people
 13 to kill those responsible for his brother's murder, and more
 14 specifically, offering to pay money for any Gangster Disciple that is
 15 killed." (Ex. 1 at 12.) Evidence collected in this case also shows
 16 defendant has allegedly placed monetary bounties to solicit other
 17 murders, including a family member of a witness. (See Ex. 2 [Under
 18 Seal] at 12, 14-15.) Defendant's modus operandi is clear: he will
 19 use his power, his money, his influence, and any pretrial release to
 20 endanger anyone who he perceives as a threat, including witnesses in
 21 this case.

22 **II. ARGUMENT**

23 **A. Defendant Is Presumed to Be a Flight Risk and Danger**

24 A defendant must be detained pending trial where "no condition
 25 or combination of conditions will reasonably assure the appearance of
 26 the person as required and the safety of any other person and the
 27 community." 18 U.S.C. § 3142(e)(1). Detention is thus appropriate

1 for a defendant who is either a danger to the community or a flight
 2 risk. United States v. Motamed, 767 F.2d 1403, 1406 (9th Cir.
 3 1985).

4 “[T]he Bail Reform Act mandates an individualized evaluation
 5 guided by the factors articulated in § 3142(g).” United States v.
 6 Diaz-Hernandez, 943 F.3d 1196, 1199 (9th Cir. 2019). Those factors
 7 are:

- 8 (1) the nature and circumstances of the offense charged,
 including whether the offense is a crime of violence;
- 9 (2) the weight of the evidence against the defendant;
- 10 (3) the defendant’s character, physical and mental condition,
 family and community ties, past conduct, history relating
 to drug or alcohol abuse, criminal history; and
- 11 (4) the nature and seriousness of the danger to any person or
 to the community that would be posed by the defendant’s
 release. 18 U.S.C. § 3142(g).

14
 15 United States v. Winsor, 785 F.2d 755, 757 (9th Cir. 1986) (per
 16 curiam) (citation omitted).

17 In cases involving certain violent offenses, including the
 18 firearms count set forth in Count Three, the Bail Reform Act
 19 established a presumption that a defendant is both a flight risk and
 20 a danger to the community. 18 U.S.C. § 3142(e)(3)(B). Once the
 21 presumption is triggered, the defendant has the burden of producing
 22 or proffering evidence to rebut the presumption. United States v.
 23 Hare, 873 F.2d 796, 798 (5th Cir. 1989); United States v. King, 849
 24 F.2d 485, 488 (11th Cir. 1988). Congress intended that the statutory
 25 presumptions would have a practical effect. United States v. Jessup,
 26 757 F.2d 378, 382 (1st Cir. 1985), abrogated on other grounds, United
 27 States v. O’Brien, 895 F.2d 810 (1st Cir. 1990). The presumptions do

1 not disappear when a defendant meets his or her burden of producing
2 rebuttal evidence. United States v. Perez-Franco, 839 F.2d 867, 870
3 (1st Cir. 1986); United States v. Dominguez, 783 F.2d 702, 707 (7th
4 Cir. 1986); United States v. Ward, 63 F.Supp.2d 1203, 1209 (C.D. Cal.
5 1999); United States v. Clark, 791 F. Supp. 259, 260 (E.D.W.A. 1992).
6 The presumptions remain in the case as evidentiary findings
7 militating against release, to be weighed along with other evidence
8 relevant to the factors listed in § 3142(g). Dominguez, 783 F.2d at
9 707.

B. Defendant's Murder and Firearms Charges Justify Pretrial Detention

Defendant's offenses are serious, brazen, and deadly. Defendant caused six hitmen to travel to Los Angeles to commit a machine-gun-murder in broad daylight. Defendant allegedly financed the murder plot and offered to reward the killers by paying a bounty for the murder of his rival. As discussed above, this bounty was not an isolated event; it was how defendant led his organization and conducted his business. Defendant used his power, influence, and vast resources to promote and perpetuate violence --- with deadly consequence. The fact that defendant is charged with orchestrating the murder plot, taken together with the strong evidence establishing his guilt, is alone sufficient to warrant his detention in this case.

See United States v. Liebowitz, 669 F. App'x 603, 604 (2d Cir. 2016) (affirming detention order even though murder-for-hire defendant "had never previously been charged with a violent crime" because the "record contains compelling evidence of [defendant]'s participation in the charged crimes and his knowledge and acquiescence in the use

1 of violence to commit them" which "admits a clear and compelling
 2 finding that he posed a threat of future harm"); United States v.
 3 Barone, 387 F. App'x 88, 89-90 (2d Cir. 2010) (affirming detention
 4 order for defendant whose danger to the community "was clearly and
 5 convincingly evidenced by . . . his readiness to commit the charged
 6 murder-for-hire").

7 As one would expect given the nature of the charges, defendant
 8 faces a lengthy prison sentence --- mandatory life imprisonment. The
 9 severity of the potential penalty underscores defendant's risk of
 10 non-appearance and the threat of danger defendant poses to those
 11 persons involved in his prosecution. See Liebowitz, 669 F. App'x at
 12 605 ("The lengthy jail sentence that could be imposed for the charged
 13 crimes provides an incentive to flee."); see also United States v.
 14 Brennerman, 705 F. App'x 13, 15 (2d Cir. 2017) (affirming denial of
 15 bail based on risk of non-appearance where defendant facing fraud
 16 charges that exposed him to a "range of 57 to 71 months'
 17 imprisonment"). As noted above, even before defendant was charged in
 18 this case, he booked three international flights and attempted to
 19 leave the country on the same day that his co-conspirators were
 20 arrested. See Liebowitz, 669 F. App'x at 605 (affirming risk of
 21 flight finding where "the record shows [defendant's] access to
 22 substantial resources to finance flight"). No amount of money --- or
 23 conditions of release --- will adequately protect the community or
 24 prevent the defendant from fleeing prosecution.

25 **C. Defendant Presents a Significant Danger to the Community**

26 Defendant's release would pose a grave risk to the safety of the
 27 public, and witnesses and potential witnesses in this case.

1 Defendant has already shown he is willing to put his wealth behind
2 pursuing violence, including allegedly offering a bounty to kill a
3 family member of a witness. (See Ex. 2 [Under Seal] at 12, 14-15;
4 see also Ex. 1 at 12.) No condition or combination of conditions can
5 ensure the safety of witnesses or others involved in the prosecution
6 if defendant were to be released. Indeed, defendant could have
7 committed every overt act in this case while on supervision as he was
8 operating in a clandestine fashion, largely through criminal
9 intermediaries.

10 At bottom, defendant's proposed bail resources do not mitigate
11 his danger to the community or sufficiently reduce his risk of
12 flight. His funding and orchestration of the murder conspiracy shows
13 that his proposed bail resources are woefully inadequate to mitigate
14 the danger he poses. See United States v. Hir, 517 F.3d 1081, 1092
15 (9th Cir. 2008) (affirming district court's denial of proposed
16 \$600,000 secured bail package based on risk defendant posed to the
17 community). And although he proposes a surrender of his passport,
18 location monitoring and/or curfew, and intensive pre-trial
19 supervision, any such limitations would all suffer from the "critical
20 flaw" in that "they depend on [defendant]'s good faith compliance" in
21 order to be effective. Hir, 517 F.3d at 1092. In particular,
22 "electronic monitoring does not prevent a defendant from committing
23 crimes within the monitoring radius" and "there is no reasonable way
24 to assure that a defendant would not make impermissible stops or
25 detours on his way to places permitted under the restrictions," id.
26 at 1092 n.11, or use social media to give instructions to
27 intermediaries. Moreover, defendant has already shown that he cannot
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1 abide by even the simplest of conditions imposed upon him while he's
2 already been in custody at the MDC --- despite clear instructions to
3 not engage in three-way calls, defendant has repeatedly abused the
4 phone system at MDC to engage in such conduct. His actions in an
5 already-restrictive condition of confinement show that there is a
6 potent risk that he cannot and will not abide by bond conditions on
7 his own accord, outside the purview of the USMS and BOP.

8 **III. CONCLUSION**

9 For the foregoing reasons, the government respectfully requests
10 that this Court order defendant detained pending trial in this
11 matter.

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